1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 CENTRAL DISTRICT OF CALIFORNIA 10 11 STEPHEN MENCHACA, NO. SA CV 09-1115-JHN(E) 12 Petitioner, 13 ORDER ADOPTING FINDINGS, 14 JOHN F. SALAZAR, Warden, CONCLUSIONS AND RECOMMENDATIONS 15 Respondent. OF UNITED STATES MAGISTRATE JUDGE 16 17 18 Pursuant to 28 U.S.C. section 636, the Court has reviewed the 19 Petition, all of the records herein and the attached Report and 20 Recommendation of United States Magistrate Judge. The Court approves 21 and adopts the Magistrate Judge's Report and Recommendation, except 22 for page 14, lines 1-21 thereof, which is hereby replaced with the following: 23 24 25 In Hayward, the Ninth Circuit held that, "in the absence of state law establishing otherwise, there is 26 no federal constitutional requirement that parole be 27 28 granted in the absence of 'some evidence' of future

1 | dangerousness. . . ." <u>Hayward</u>, 603 F.3d at 561. The 2 Hayward Court suggested that a federal Due Process liberty 3 interest might arise when state law establishes such a 4 requirement. Id. Ultimately, however, the Hayward Court 5 stated that it did not need to decide whether a federal Due 6 Process liberty interest arises because of California law's 7 requirement that parole be granted in the absence of "some 8 evidence" of future dangerousness. <u>Id.</u> at 562-63. 9 Hayward Court stated that it did not need to decide this 10 issue given the fact that California's "some evidence" 11 requirement is "exactly the same" as the requirement 12 previously applied in pre-Hayward Ninth Circuit case law. 13 <u>Id.</u> at 562-63 (citing <u>Lawrence</u> and Shaputis). Therefore, 14 in a habeas case challenging a finding of parole 15 unsuitability in California, the federal district court 16 "need only decide whether the California judicial decision 17 [upholding the finding] was an 'unreasonable application' 18 of the California 'some evidence' requirement, or was 19 'based on an unreasonable determination of the facts in 20 light of the evidence.'" Id. (citing 28 U.S.C. §§ 21 2254(d)(1), (2)); <u>but cf. Cooke v. Solis</u>, F.3d , 22 2010 WL 2330283, at *6 (9th Cir. June 4, 2010) (appearing 23 to state that California's "some evidence" standard creates 24 a "federally enforceable liberty interest") ("Cooke"); 25 Pearson v. Muntz, 606 F.3d 606, 2010 WL 2108964, at *2 (9th Cir. 2010) ("Pearson") ("By holding that a federal habeas 26 27 court may review the reasonableness of the state court's 28 application of the California 'some evidence' rule, Hayward

1	necessarily held that compliance with the state requirement
2	is mandated by federal law, specifically the Due Process
3	Clause").
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5	IT IS ORDERED that Judgment be entered denying and dismissing
6	the Petition with prejudice.
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8	IT IS FURTHER ORDERED that the Clerk serve copies of this Order
9	the Magistrate Judge's Report and Recommendation and the Judgment
10	herein by United States mail on Petitioner and counsel for
11	Respondent.
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13	LET JUDGMENT BE ENTERED ACCORDINGLY.
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15	DATED:, 2010.
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17	JACOUELINE H. NGUYEN
18	UNITED STATES DISTRICT JUDGE
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